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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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11 Curt Herberts, II

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 CURT HERBERTS, II, an individual
15 doing business as Pacific Coast Realty
16 Group,

17 Plaintiff,

18 vs.

19 PACIFIC COAST REALTY GROUP,
20 INC., a California corporation; JAMES
21 P. BRENNAN, an individual; and DOES
22 1 through 10, Inclusive,

23 Defendants.

CASE NO. *EDCV13-2302-RGK(SR)*

COMPLAINT FOR:

1. FALSE DESIGNATION OF
ORIGIN [15 U.S.C. § 1125(a)];
2. TRADE NAME OR SERVICE
MARK DILUTION [15 U.S.C. §
1125(c)(1)];
3. INJURY TO BUSINESS
REPUTATION AND DILUTION
[CAL. BUS. & PROF. CODE §
14247];
4. COMMON LAW UNFAIR
COMPETITION AND
TRADEMARK INFRINGEMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Curt Herberts, II (hereinafter "Plaintiff"), for his complaint against
2 Pacific Coast Realty Group, Inc., ("PCRG") and James P. Brennan ("Brennan")
3 alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction under 28 U.S.C. section 1338(a) as this
6 action arises under the Lanham Act, 15 U.S.C. sections 1125(a) and 1125(c)(1).
7 This Court also has pendent jurisdiction under 28 U.S.C. section 1367.

8 2. Venue is proper in the Central District of California under 28 U.S.C.
9 sections 1391(b) and (c) because defendants reside in this judicial district, a
10 substantial part of the events, omissions and acts that are the subject matter of this
11 action occurred within the Central District of California, and defendants are subject
12 to personal jurisdiction and may be found in this district.

13 **PARTIES**

14 3. Plaintiff is an individual who is a California resident doing business in
15 California as Pacific Coast Realty Group.

16 4. On information and belief, defendant PCRG is a California corporation
17 with its principal place of business at 27450 Ynez Road, #200, Temecula, California
18 92591.

19 5. On information and belief, defendant Brennan is the controlling
20 shareholder of PCRG.

21 6. On information and belief, Plaintiff alleges that each of the defendants
22 named herein as Does 1 through 10, inclusive, performed, participated in, or abetted
23 in some manner, the acts alleged herein, proximately caused the damages alleged
24 below, and are liable to Plaintiff for the damages and relief sought herein.

25 7. On information and belief, Plaintiff alleges that, in performing the acts
26 and omissions alleged herein, and at all times relevant hereto, each of the defendants
27 was the agent and employee of each of the other defendants and was at all times
28 acting within the course and scope of such agency and employment with the

1 knowledge and approval of each of the other defendants.

2 8. The identities of the individuals and entities named as Doe defendants
3 herein are not presently known, but Plaintiff will seek to amend the Complaint to
4 properly identify them when their proper names have been ascertained.

5 NATURE OF THE CASE

6 9. Plaintiff seeks injunctive relief, damages, attorneys' fees, and costs
7 against defendants for false designation of origin and/or sponsorship under 15
8 U.S.C. section 1125(a); dilution under 15 U.S.C. section 1125(c); injury to business
9 reputation and dilution under California Business and Professions Code section
10 14247; and common law trademark and trade name infringement, and unfair
11 competition.

12 FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13 10. Plaintiff is a licensed California real estate broker who has been doing
14 business as Pacific Coast Realty Group since May 1, 1992. Copies of Plaintiff's
15 Fictitious Business Name Statements filed with the County of Orange showing that
16 Plaintiff began using the name on May 1, 1992 are attached hereto as Exhibit A. A
17 copy of an excerpt from the Newport Beach-Costa Mesa Daily Pilot showing the
18 same is attached hereto as Exhibit B.

19 11. Since May 1992 to the present Plaintiff has continuously used the name
20 Pacific Coast Realty Group in connection with his real estate services. A copy of
21 Plaintiff's State of California Department of Real Estate License Certificate, issued
22 on June 5, 1992 and showing his fictitious business name as Pacific Coast Realty
23 Group, is attached hereto as Exhibit C.

24 12. Over the last twenty-one years during which Plaintiff used the name
25 Pacific Coast Realty Group, the name has acquired distinctiveness as well as
26 secondary meaning in the minds of consumers in connection to Plaintiff and his real
27 estate services. Plaintiff expended a substantial amount of time and effort on client
28 development and brand recognition through advertising and as a result has

1 developed extensive goodwill associated with the name Pacific Coast Realty Group.

2 13. Plaintiff is informed and believes and based thereon alleges that
3 starting on August 4, 2009 – seventeen years after Plaintiff began using the Pacific
4 Coast Realty Group name – PCRG and Brennan (hereinafter “Defendants”) began
5 providing real estate services using the Pacific Coast Realty Group name.
6 Defendants use the Pacific Coast Realty Group name in conducting and promoting
7 their business.

8 14. Defendants are not authorized to use the Pacific Coast Realty Group
9 name in connection with their goods or services, nor are Defendants affiliated with
10 Plaintiff.

11 15. Plaintiff sent cease-and-desist letters to Defendants on September 5,
12 2013 and October 31, 2013, giving notice of Plaintiff’s ownership of the mark
13 “Pacific Coast Realty Group” and demanding that Defendants immediately cease
14 and desist from all uses of the mark in connection with their goods and services.

15 16. Despite Plaintiff’s repeated demands, Defendants have failed to cease
16 and desist from all uses of the Pacific Coast Realty Group mark in connection with
17 their goods and services. Defendants continue to use the mark in promoting their
18 business.

19 **FIRST CLAIM FOR RELIEF**

20 **(Unfair Competition by False Designation of Origin – 15 U.S.C. § 1125(a))**

21 17. Plaintiff repeats and incorporates herein by reference each and every
22 allegation contained in Paragraphs 1 through 16 above, inclusive, as though fully set
23 forth herein.

24 18. Defendants, either independently or through collaboration with one
25 another, are using the Pacific Coast Realty Group mark in connection with their
26 goods and services.

27 19. On information and belief, Defendants use the Pacific Coast Realty
28 Group mark in commerce, which use has been done with the deliberate intent of

1 capitalizing and trading on the good will and reputation of Plaintiff.

2 20. The use in commerce of the Pacific Coast Realty Group mark by
3 Defendants will tend to cause and, on information and belief, has caused the
4 relevant public and trade to believe erroneously that Defendants' services are
5 associated, authorized, sponsored, or controlled by Plaintiff.

6 21. Defendants' use in commerce of the Pacific Coast Realty Group mark
7 in connection with their goods and services constitutes a false designation of the
8 origin and/or sponsorship of such goods and services and falsely describes and
9 represents such goods and services.

10 22. By their acts as alleged herein, Defendants have falsely designated and
11 represented goods and services sold in commerce in violation of 15 U.S.C. section
12 1125(a) and have otherwise used the good will of Plaintiff to sell Defendants' own
13 goods and services and have otherwise competed unfairly with Plaintiff.

14 23. On information and belief, Defendants are now committing the acts
15 complained of above and have continued to do so in defiance of Plaintiff's requests
16 that they cease such acts.

17 24. Defendants, after due notice, have displayed a willful course of conduct
18 toward appropriation and destruction of Plaintiff's rights in and to the Pacific Coast
19 Realty Group mark.

20 25. Defendants' wrongful acts and conduct as alleged herein have
21 permitted or will permit them to generate substantial sales and profits on the
22 strength of Plaintiff's substantial advertising, sales, consumer recognition, and good
23 will in connection with the Pacific Coast Realty Group mark.

24 26. As a result of Defendants' wrongful acts alleged herein, Plaintiff has
25 suffered and will continue to suffer monetary damage in an amount not thus far
26 determined.

27 27. On information and belief, Defendants' acts of unfair competition by
28 false designation of origin in violation of the Lanham Act have caused financial

1 injury and damages to Plaintiff and have been willful, making this an exceptional
2 case within the meaning of the Lanham Act, 15 U.S.C. section 1117, thereby
3 entitling Plaintiff to damages, attorneys' fees, and costs.

4 28. Defendants' acts and conduct constitute unfair competition that has
5 caused and, unless restrained and enjoined by this Court, will continue to cause
6 irreparable harm, damage, and injury to Plaintiff's good will and business
7 reputation.

8 29. Plaintiff is entitled to damages as a result of Defendants' actions and
9 conduct and, because such damages alone do not provide Plaintiff with an adequate
10 remedy at law, Plaintiff is entitled to injunctive relief.

11 **SECOND CLAIM FOR RELIEF**

12 **(Trade Name or Service Mark Dilution – 15 U.S.C. § 1125(c)(1))**

13 30. Plaintiff repeats and incorporates herein by reference each and every
14 allegation contained in Paragraphs 1 through 29 above, inclusive, as though fully set
15 forth herein.

16 31. Plaintiff's Pacific Coast Realty Group trade name and service mark was
17 used in commerce long before Defendants' adoption and use of the Pacific Coast
18 Realty Group name in connection with their goods and services.

19 32. Plaintiff's Pacific Coast Realty Group trade name and service mark has
20 become famous because of long, extensive, continuous, and exclusive use by
21 Plaintiff in connection with his real estate services, such fame occurring long before
22 Defendants' adoption and use of the Pacific Coast Realty Group name in connection
23 with their goods and services.

24 33. Defendants use the Pacific Coast Realty Group name in promoting their
25 goods and services in the same trade areas and channels of trade in which Plaintiff's
26 Pacific Coast Realty Group trade name and service mark is recognized and famous.

27 34. On information and belief, Defendants' use of the Pacific Coast Realty
28 Group name has lessened the capacity of Plaintiff's famous Pacific Coast Realty

1 Group trade name and service mark to identify and distinguish Plaintiff's goods and
2 services.

3 35. Defendants' acts and conduct as alleged herein have tarnished the
4 reputation and recognition of Plaintiff's famous Pacific Coast Realty Group trade
5 name and service mark by the low quality of Defendants' goods and services.

6 36. On information and belief, Defendants' acts of trade name or service
7 mark dilution in violation of the Lanham Act have caused financial injury and
8 damages to Plaintiff and have been willful, making this an exceptional case within
9 the meaning of the Lanham Act, 15 U.S.C. section 1117, thereby entitling Plaintiff
10 to damages, attorneys' fees, and costs.

11 37. Plaintiff has no adequate remedy at law and is being irreparably
12 damaged by dilution of its famous mark, in violation of 15 U.S.C. section 1125(c).
13 Therefore, Plaintiff is entitled to injunctive relief.

14 **THIRD CLAIM FOR RELIEF**

15 **(Injury to Business Reputation and Dilution –**

16 **Cal. Bus. & Prof. Code § 14247)**

17 38. Plaintiff repeats and incorporates herein by reference each and every
18 allegation contained in Paragraphs 1 through 37 above, inclusive, as though fully set
19 forth herein.

20 39. Plaintiff is the owner of the Pacific Coast Realty Group mark, which is
21 distinctive and famous in the State of California.

22 40. On information and belief, Defendants have used and continue to use
23 the famous Pacific Coast Realty Group mark after the mark became famous, which
24 use dilutes the distinctive quality of Plaintiff's mark.

25 41. On information and belief, Defendants' actions described herein were
26 taken and continue to be taken with full knowledge that such actions would and do
27 dilute Plaintiff's Pacific Coast Realty Group mark and with the intention to cause
28 dilution of the mark.

42. As a result of the actions described herein, Defendants have caused, and unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff, including but not limited to injury to Plaintiff's good will and business reputation.

43. Plaintiff has no adequate remedy at law and is being irreparably damaged by Defendants' acts in violation of California Business & Professions Code section 14247.

FOURTH CLAIM FOR RELIEF

(Common Law Trade Name and Trademark Infringement, and Unfair Competition)

44. Plaintiff repeats and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 43 above, inclusive, as though fully set forth herein.

45. Defendants' actions and conduct as alleged herein constitute unfair competition under California common law.

46. Defendants' actions and conduct in adopting and using the Pacific Coast Realty Group mark in California constitute trademark infringement under California common law.

47. Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm, damage, and injury to Plaintiff, including but not limited to injury to Plaintiff's good will and business reputation.

48. Plaintiff has no adequate remedy at law, and Plaintiff is being irreparably damaged by Defendants' acts in violation of California common law, entitling Plaintiff to injunctive relief.

49. Defendants' actions and conduct as alleged herein are malicious and fraudulent and entitle Plaintiff to punitive damages under Civil Code section 3294.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an order and judgment against Defendants, and each of them, as follows:

1. That Defendants, and each of them, their officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from using the designation "Pacific Coast Realty Group" or any other name or mark incorporating Plaintiff's service mark, either alone or in combination with other words or symbols, in the marketing, sales, distribution, promotion, advertising, identification, or in any other manner in connection with any real estate services and other related services at any locality in the United States;

2. That Defendants, and each of them, their officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from using the designation "Pacific Coast Realty Group" or any other name or mark incorporating Plaintiff's service mark in any form or manner that would tend to identify or associate Defendants' businesses or services with Plaintiff in the marketing, sale, distribution, promotion, advertising, identification, or in any other manner in connection with any business;

3. That Defendants, and each of them, their officers, directors, partners, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them, and any others within their control or supervision, and all others in active concert or participation with the above, be enjoined during the pendency of this action and permanently thereafter from representing to anyone

1 (either orally or in writing) that their businesses are affiliated with Plaintiff in any
2 way or are approved by Plaintiff;

3 4. For an order requiring Defendants to deliver to Plaintiff's attorney
4 within thirty (30) days after the entry of any preliminary or permanent injunction, to
5 be impounded or destroyed by Plaintiff, all literature, signs, labels, prints, packages,
6 wrappers, containers, advertising materials, stationery, and any other items in their
7 possession or control that contain the infringing designation "Pacific Coast Realty
8 Group" or any other name or mark incorporating Plaintiff's service marks, either
9 alone or in combination with other words and symbols;

10 5. For an order requiring Defendants to remove from their business
11 premises within thirty (30) days after the entry of any preliminary or permanent
12 injunction, all instances of the "Pacific Coast Realty Group" designation; to destroy
13 all molds, plates, masters, or means of creating the infringing items; and to file a
14 name change with the California Secretary of State changing the corporate name of
15 Pacific Coast Realty Group, Inc.;

16 6. For an order requiring Defendants to instruct, within thirty (30) days
17 after the entry of any preliminary or permanent injunction, any print directory,
18 Internet directory, or website that they have caused to carry the Pacific Coast Realty
19 Group mark, to cease using such names at the earliest possible date;

20 7. For an order requiring Defendants to file with the Clerk of this Court
21 and serve Plaintiff, within thirty (30) days after the entry of any preliminary or
22 permanent injunction, a report in writing, under oath, setting forth in detail the
23 manner and form in which defendants have complied with 1 through 6 above;

24 8. For an award of Defendants' profits and Plaintiff's damages in an
25 amount not yet ascertained, but believed to exceed \$100,000;

26 9. For an award of three times Plaintiff's damages or Defendants' profits
27 in view of the intentional and willful nature of Defendants' acts, pursuant to 15
28 U.S.C. section 1117;

- 1 10. For an award of punitive damages according to proof;
2 11. For an award of reasonable attorneys' fees under 15 U.S.C.
3 section 1117;
4 12. For an award of pre- and post-judgment interest at the highest rate
5 allowed by law;
6 13. For an award of costs and disbursements incurred in this action; and
7 14. For such further relief as this Court shall deem just and proper.
8

9 Dated: December 16, 2013

RUTAN & TUCKER, LLP
MICHAEL D. ADAMS
PROUD USAHACHAROENPORN

11 By: 

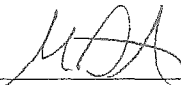
12 Michael D. Adams
13 Attorneys for Plaintiff
14 CURT HERBERTS, II
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DEMAND FOR JURY TRIAL

Plaintiff CURT HERBERTS, II hereby demands a jury trial in this action.

Dated: December 16, 2013

RUTAN & TUCKER, LLP
MICHAEL D. ADAMS
PROUD USAHACHAROENPORN

By: 
Michael D. Adams
Attorneys for Plaintiff
CURT HERBERTS, II